

SUPREME COURT

OF THE

UNITED STATES.

August Term 1800.

Present, PATERSON,
CHASE,
WASHINGTON, and } Justices.
MOORE,

Priestman, Plaintiff in Error, *versus* The United States.

IN error from the Circuit Court, for the *Pennsylvania* district.
An information was filed in the District Court in the following terms:

“ *Be it remembered*, that on this 16th day of *January*, one
“ thousand seven hundred and ninety-eight, into the District
“ Court of the *United States* for the *Pennsylvania* district, in
“ his proper person comes *William Rawle* attorney for the said
“ *United States* for the district aforesaid, who for the said
“ *United States* in this behalf prosecutes and for the said *United*
“ *States* gives the court here to understand and be informed that
“ between the first day of *November* last past and the exhibition
“ of this bill two hundred and three silver watches, three gold
“ watches, two enamelled watches, two metal watches, two hunt-
“ ing watches, and seven pinchbeck watches, being articles of
“ foreign manufacture and liable to the payment of duties im-
“ posed by the laws of the *United States* and being together of
“ the value of eight hundred dollars and more were transported
“ from the state of *Maryland* across the state of *Delaware*, to
“ the district of *Pennsylvania* without a permit from the collec-
“ tor of any district in the said state of *Maryland*, for that pur-
“ pose first had and obtained.

“ And the attorney aforesaid prosecuting as aforesaid further
“ gives the Court to understand and be informed that the said
“ goods wares and merchandizes so as aforesaid transported to
the

" the district of *Pennsylvania* were not within twenty-four hours 1800.
 " after the arrival thereof in the said district of *Pennsylvania* }
 " reported to the collector of the said district of *Pennsylvania*
 " by the owner or consignee thereof or by any other person
 " whatever.

" Whereby and by force of the acts of the congress of the said
 " *United States* the said 203 silver watches, 3 gold watches, 2
 " enamelled watches, 2 metal watches, 2 hunting watches, and 7
 " pinchbeck watches, have become forfeited to the said *United*
 " *States* and for the causes aforesaid have been seized by *Sharp*
 " *Delany*, esquire, collector of the said district of *Pennsylvania*,
 " and are now in the custody of the marshal, &c. Wherefore the
 " said attorney prosecuting as aforesaid prays the advice of the
 " Court upon the premises, and due process, &c. &c."

This information was founded on the act of congress, entitled
 " An act for enrolling and licensing ships, or vessels, to be em-
 " ployed in the coasting trade and fisheries, and for regulating
 " the same;" 2 vol. 168. and, particularly, upon the 19th section
 of the act, which is in these words:

" Sec. 19. *And be it further enacted*, That it shall and may
 " be lawful for the collector of the district of *Pennsylvania*, to
 " grant permits for the transportation of goods, wares or mer-
 " chandize of foreign growth or manufacture, across the state of
 " *New-Jersey*, to the district of *New-York*, or across the state of
 " *Delaware*, to any district in the state of *Maryland* or *Virginia*;
 " and for the collector of the district of *New-York*, to grant like
 " permits for the transportation across the state of *New-Jersey*;
 " and for the collector of any district of *Maryland* or *Virginia*, to
 " grant like permits for the transportation across the state of *Del-*
 " *ware*, to the district of *Pennsylvania*: *Provided*, That every such
 " permit shall express the name of the owner, or person sending
 " such goods, and of the person or persons, to whom such goods
 " shall be consigned, with the marks, numbers and description of the
 " packages, whether bale, box, chest, or otherwise, and the kind
 " of goods contained therein, and the date, when granted; and
 " the owner or person sending such goods, shall swear or affirm,
 " that they were legally imported, and the duties thereupon paid
 " or secured: *And provided also*, That the owner or consignee of
 " all such goods, wares and merchandize, shall, within twenty-
 " four hours after the arrival thereof, at the place to which they
 " were permitted to be transported, report the same, to the col-
 " lector of the district where they shall so arrive, and shall deli-
 " ver up the permit accompanying the same, and if the owner or
 " consignee aforesaid, shall neglect or refuse to make due entry
 " of such goods within the time, and in the manner, herein di-
 " rected, all such goods, wares and merchandize shall be subject
 " to forfeiture; and if the permit granted shall not be given up,
 " within

1800. { " within the time limited for making the said report, the person
 " or persons to whom it was granted, neglecting or refusing to
 " deliver it up, shall forfeit fifty dollars for every twenty-four
 " hours it shall be withheld afterwards: *Provided*, That where
 " the goods, wares and merchandize, to be transported in manner
 " aforesaid, shall be of less value than eight hundred dollars, the
 " said oath and permit shall not be deemed necessary, nor shall
 " the owner or consignee be obliged to make report to the col-
 " lector of the district where the said goods, wares and merchan-
 " dize shall arrive."

William Priestman, the plaintiff in error, filed a claim for the watches, setting forth "that he had paid the duties upon them, and that he did not transport them from the district of *Maryland*, across the state of *Delaware*, into the district of *Pennsylvania*." The attorney of the district having filed a general replication to the claim, a case was made for the opinion of the Court, in which the material facts were stated, as follows:

" That the watches in question were of the value of 3,899 dollars. That they were imported into the district of *Maryland*, and the duties thereon paid, or secured, according to law. That they were afterwards carried by the claimant, or his agent, from the district of *Maryland*, across the state of *Delaware*, to the state of *Pennsylvania*, to wit, to the city of *Philadelphia*, without any licence, or permit, so to do, first had and obtained from the collector of the port of *Baltimore*; and that no notice was given to the collector of the port of *Philadelphia*. That the watches were publicly offered for sale, next door to the custom-house, in the city of *Philadelphia* with a number of other articles; and were afterwards seized as forfeited. That the watches did not belong to the master, owner, or any mariner of the ship, or vessel, in which they were imported from beyond sea into *Baltimore*; nor was the claimant captain, owner, or mariner, of the packet-boat, in which they were brought from *Baltimore* to *French-town*, or from *Newcastle* to *Philadelphia*."

The case was argued before the District Judge, in *December* 1798, and a decree of condemnation pronounced; which was affirmed upon a writ of error to the Circuit Court, in *April* term 1800;(1) and, thereupon, the cause was removed into this Court;
 and

(1) The Circuit Court was composed of CHASE, Justice, and PETERS, District Judge. The presiding Judge, in delivering the opinion of the Court, made the following observations:

CHASE, Justice. By the rules, which are laid down in *England* for the construction of statutes, and the latitude which has been indulged in their application, the *British* Judges have assumed a legislative power; and on the pretence of judicial exposition, have, in fact, made a great portion of the statute law of the kingdom. Of those rules of construction, none can be more dangerous, than that, which distinguishing between the intent, and the words, of
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and argued, upon the same facts, by the district attorney, (*Rawle*, 1800. in the absence of *Lee*, attorney-general) for the *United States*, assisted by *W. Sergeant*, for the informer; and by *Ingersoll* and *S. Levy*, for the plaintiff in error.

For the plaintiff in error. This is a penal act, and must, on general principles, be construed strictly. 1 *Black. Com.* 88. 92. *Plowd.* 109. 3 *Co.* 7. *Plowd.* 13. *b.* 19 *Vin. Abr.* 523, 4. 8 *Mod.* 7. 65. 10 *Co.* 73. *Cowp.* 355. 660. In the particular case, before the Court, the facts call for the most liberal exposition in favour of the claimant; since, there is not the slightest ground to impute a fraudulent intention to him; nor could there be the smallest loss of revenue to the public. Taking, then, the 33d section of the same act of congress into view, to form a just conclusion from the whole, the watches in question are exempted from any forfeiture, because they did not belong to the master, owner, or mariners, of the vessel, in which they were imported, and because the duties upon them had been previously paid, or secured. (2) It must, indeed, be admitted, that there is an apparent contradiction between the 19th section, which imposes the forfeiture, if the owner, or consignee of the goods, neglects to perform the duties prescribed; and the 33d section, which exempts the goods from forfeiture, if they belong to any person, other than the owner, master, or mariners, of the vessel: but the different parts of statutes should be so construed, that each, if possible, may have an operation, consistent and harmonious with the rest. Admitting, therefore, that the claimant is within the

the legislature, declares, that a case not within the meaning of a statute, according to the opinion of the Judges, shall not be embraced in the operation of the statute, although it is clearly within the words: or, *vice versa*, that a case within the meaning, though not within the words, shall be embraced.

For my part, however, sitting in an *American* Court, I shall always deem it a duty to conform to the expressions of the legislature, to the letter of the statute, when free from ambiguity and doubt; without indulging a speculation, either upon the impolicy, or the hardship, of the law. In the present instance, the clause of forfeiture is clear, direct, and positive. If the provision of the 33d section were equally clear, and necessarily connected with the subject of the 19th section, it would, undoubtedly, control the clause of forfeiture. But say even, that the 33d section is obscure in its terms, and doubtful in its relation (which I do not admit) this would not induce me to supersede, control, and annul, what is neither obscure, nor doubtful, in the provisions of the 19th section.

Upon the whole, the effect, in the present case, will, probably, be severe upon the claimant, if he has only been guilty of an act of negligence: but the law does not distinguish, as to the present object, between a careless, and a fraudulent, omission of the duty prescribed, and the Court cannot do it.

(2) Sec. 33. "*Provided nevertheless, and be it further enacted, That in all cases where the whole, or any part, of the lading, or cargo, on board any ship, or vessel, shall belong bona fide to any person, or persons, other than the master, owner, or mariners, of such ship, or vessel, and upon which the duties shall have been previously paid, or secured, according to law, shall be exempted from any forfeiture under this act, any thing herein contained to the contrary notwithstanding.*"

description

1800. description of the 19th section, to incur a forfeiture, the apparent contradiction of the law will be obviated, by admitting, also, that the previous payment of the duties on the goods, exempts him from the forfeiture, under the 33d section. Besides, the information does not state, that the master of the vessel had no manifest; and to constitute the offence the act of irregular transportation must be connected with the want of a manifest, conformably to the 18th section. The 19th section (and, indeed, the whole of the law, which is made emphatically to regulate *the coasting trade*) from the plain import of its language, applies to cases of water carriage, and cases of water carriage are equally the subject of the 33d section. Nor is there any thing in the case stated to show that the watches were not transported coast-wise; or brought in the owner's private carriage; and even the 19th section does not contain an injunction upon *the owner* to take out a *permit* for his goods, on which he has paid the duties, to whatever place he may chuse to remove them.

For the United States. Though penal laws are to be strictly construed, they are to be fairly and truly construed, according to the plain and natural signification of the words employed. 2 *Ld. Raym.* 1421. 1 *Dall. Rep.* 197. 10 *Co.* 73. If, however, the claimant's construction should prevail, the sweeping operation of the 33d section of the act would annihilate its most positive and most salutary sanctions; but a proviso, so repugnant to the enacting clauses, would itself be void. 1 *Bl. Com.* 1 *Co. Rep.* 47. a. The case stated brings the facts precisely within the information; and the information is precisely within the 19th section. The forfeiture is, therefore, complete, and must be enforced by the Court, unless it is remitted by the operation of the 33d section. It becomes important, then, to inquire, 1st. What is the true meaning of this ambiguous, and, certainly, ungrammatical clause? and, 2d. To what does the true meaning relate?

1st. The first difficulty that occurs, in settling the meaning of the 33d section, arises from the indefinite call for a noun, to correspond with the verb; where several nouns are introduced, and all cannot be applied. Is it the *ship*, the *master*, or the *cargo*, which, in the specified case, "*shall be exempted from any forfeiture?*" The marginal note declares the exemption in favour of the *ship*; but the argument of the claimant, asks it for the *cargo*. The 33d section, however, is, in form and substance, a *proviso*; and, as such, naturally refers to the next preceding section, where are to be found the offences, from which the forfeiture springs, and the subject on which the forfeiture attaches; s. 32. to wit: 1st. The transfer of a licensed ship to an alien. 2d. The employment of a licensed vessel in a trade not licensed. 3d. The possession of a forged, or altered, licence. 4th. The possession of a licence granted for another ship. In the *four* cases, the ship and the cargo

cargo on board, are declared to be the subject of forfeiture. 1800. But the exemption from forfeiture, contained in the 33d section, is not, in the generality of the expression, confined to the four cases; but extends to "any forfeiture under this act, any thing therein contained to the contrary notwithstanding." Must not *the nature* of the offence be considered, then, to qualify the generality of the expression? In the 5th section it is enacted, that if a vessel is found with a forged, or altered, licence; or makes use of a licence granted for another vessel, the offending vessel, and the cargo on board, shall be forfeited. In the 6th section it is enacted, that if a vessel is found in the coasting trade, or carrying on the fisheries, without being enrolled and licensed, and having a foreign cargo, or distilled spirits, on board, she and her lading shall be forfeited. In the 8th section it is enacted, that if an enrolled, or licensed, vessel sails on a foreign voyage without first surrendering her licence, and taking out a register, she and her cargo shall be forfeited. And in the 21st section it is enacted, that if a vessel licensed for the fisheries, is found within three leagues of the coast, with foreign merchandize on board, exceeding in value 500 dollars, she and her cargo shall be forfeited, unless she had previously obtained permission to touch at a foreign port. Now, in all these sections the forfeiture of the cargo is accumulative, derivative, and accessory, to the forfeiture of the vessel; and the punishment is inflicted for offences committed by the master, or owner, of the vessel. Hence, the policy and justice of the provision of the 33d section, in contemplation of such cases, to prevent one man's suffering for another man's wrong, by exempting from forfeiture, the cargo on board the delinquent vessel, to whose owners, master, or mariners, the cargo did not belong. With reference, therefore, to the nature of the offences, enumerated in the next preceding section, the exemption from "any forfeiture under this act," must be confined to forfeitures of the same kind; that is, to forfeitures of vessels and their cargoes, for the acts, or omissions, of the owners, or masters, of the vessels. But, still, there are specific and appropriate forfeitures, arising from the misconduct of the owners of goods. Thus, if the owner of goods transport them, *by water*, from district to district, they must be accompanied with a manifest; or they will be liable to forfeiture, under the 18th section. And, if he transport them *by land*, he must obtain a permit, under the same penalty, in compliance with the 19th section. The same principle, which suggested the necessity of a manifest in the one case, required the permit in the other; and if the goods are not included in the manifest, or, of course, if not included in the permit, they are forfeited. It is idle to argue from the supposed inutility of requiring the permit. It is an incident in a general system, that must be maintained in all its parts; for, at the slightest aperture, the most inconvenient mischiefs may enter.

1800. 2d. In answering the second general inquiry (to what does the true meaning of the 33d section refer?) it is proper more particularly to observe, that the 19th section clearly provides for the case of a transportation *by land carriage*; because it speaks of a transportation "*across a state*," which (as no canal is established) must be by land. If by land, it cannot involve the agency of a ship, or vessel; and as the proviso of the 33d section refers to the forfeiture of a ship, or vessel, and not of a waggon, or stage, as it does not describe *goods*, generally, but *a lading, or cargo, on board*, it is utterly inapplicable to a case of internal land carriage; and must be considered as referring only to cases of water transportation; or, in other words, to the coasting trade.

On the 15th of *August*, the Judges briefly delivered their opinions, *seriatim*, concurring in the following result.

By the COURT: The case stated comes clearly within the 19th section of the act of congress, for enrolling and licensing vessels to be employed in the coasting trade and fisheries. The provisions of the section are salutary, and were made to guard against frauds upon the revenue, in the transportation of goods, of foreign growth, or manufacture, across the several states. Public policy, national purposes, and the regular operations of government, require, that the revenue system should be faithfully observed, and strictly executed. It is obvious that the claimant is an offender within the purview of the 19th section. To purge the offence, he relies upon the 33d section of the same act. But it is too plain for argument, that this section cannot, by any fair and rational construction, be made to refer to the 19th section. It is inapplicable, because the objects are entirely different.

Judgment affirmed.

Talbot *versus* The Ship Amelia, Seeman, Claimant.

ERROR from the Circuit Court of *New York*. It appeared on the record, that Capt. *Talbot*, of the frigate *Constitution*, having re-captured the *Amelia*, an armed *Hamburgh* vessel, which had been captured by a *French* national corvette, and ordered to *St. Domingo*, for adjudication, brought her into the port of *New-York*. A libel was thereupon filed in the District Court by the re-captor, setting forth the facts, and praying that the vessel and cargo might be condemned as prize; or that such other decree might be pronounced as the Court should deem just and proper. A claim was filed by *H. F. Seeman*, for *Chapeau Rouge & Co. of Hamburgh*, the owners, insisting that the property had not been changed by the capture, and praying restitution with damages and costs. The *District Judge*, *HOBART*, decreed one-half of the gross amount of sales of ship and cargo, without